

C O P Y

in question

49 N

August 26, 1954

George F. Nelson, Esq.,
Assistant Attorney General

Attorney General

Hayden, Harding & Buchanan Recommendations
re: Smith and Dionne, Manchester, N.H.

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Frank D. Merrill, Commissioner,
Department of Public Works and Highways

SEP 22 1998

Dear General Merrill:

CONCORD, N.H.

Relative to the fuel tanks at the premises mentioned in your August 18, 1954 request for opinion and the recommendations of Hayden, Harding and Buchanan relative to the taking of this property, I advise as follows based upon assumption that this owner is owner of land, buildings and fixtures and not a lessee or tenant.

These tanks are in the category of fixtures. In determining whether a fixture is an irremovable fixture for the purpose of compensation, the nature and adaptability of it and the manner of its installation is generally given more weight than the intention with which the annexation was made. Such determination involves mixed questions of law and fact. Under our law I regard these tanks as part of the realty for purposes of this taking. Danforth Line of Rockets v. Holloway Mfg. Co., 12 N.H. 205, Lathrop v. Blake, 23 N.H. 46, London v. Buchanan, 62 N.H. 657.

The general view is, where the whole premises are taken, that the amount of recovery is to be measured by the value of the land, together with the improvements and fixtures thereon, viewed as a whole and not separately. In other words, the value of the complete functioning unit of property, taking into regard the use or uses for which it is suitable at the time of taking, is the criterion.

With reference to the computations on page two of Hayden, Harding and Buchanan's August 16, 1954 letter to you concerning this proposed taking, these figures do not appear to be arrived at in accordance with the law of this state and the last paragraph of that letter recognizes that fact. Because alternate figures of \$14,600 and \$12,000 are given on page 1 and the larger of those two figures "puts a value on the storage tanks as part of the real estate", their opinion in that regard would appear to have been arrived at by due methods of appraisal. No opinion is expressed as to the correctness of that figure.

It is not proposed by this opinion to substitute this office's judgment as to value for the judgment of the consultants

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or the commission charged with assessing the damages. However, in my opinion, cost of underground installation of tanks at this or some other location is not proper for consideration unless a saving to the State is occasioned thereby.

I return to you herewith the original of the August 16, 1954 letter mentioned.

Very truly yours,

George F. Nelson
Assistant Attorney General

GFM:HP

CC: Stanton C. Otis,
Right of Way Engineer,
Dep't. of Public Works and Highways

Mr. Palmer Reed, Chairman,
Manchester Commission
c/o Fred Cookson,
Pittsfield, N.H.